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PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

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April 20, 2018

Via Certified Mail, Return Receipt Requested

Complete R&R, Inc.
Attn: Environmental Manager or Supervisor
1 Wisner Avenue
Newburgh, NY 12550

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Sir or Madam,

We write on behalf of our client Riverkeeper, Inc.,¹ ("Notifier") to notify you of our intent to file suit against Complete R&R, Inc., pursuant to section 505(a) of the federal Clean Water Act ("CWA").²

Riverkeeper intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Southern District of New York seeking appropriate equitable relief, civil penalties, attorneys' fees, and other relief no earlier than 60 days from the postmark date of this letter.³

¹ Riverkeeper, Inc. is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Riverkeeper's mission includes safeguarding the environmental, recreational, and commercial integrity of the Hudson River and its ecosystem, as well as the watersheds that provide New York City with its drinking water. Riverkeeper was originally founded by the Hudson River Fisherman's Association, a group of fishermen concerned about the ecological state of the Hudson River, and the effect of its polluted and degraded condition on fish. Riverkeeper achieves its mission through public education, advocacy for sound public policies, and participation in legal and administrative forums. Riverkeeper has more than 3,000 members, many of whom reside near, use, and enjoy the Hudson River and its waters and tributaries - waters that are polluted by industrial stormwater runoff.

² 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

We intend to take legal action because Complete R&R is discharging polluted stormwater from Complete R&R's facility at 1 Wisner Avenue, Newburgh, New York, 12550 ("the Facility") to the waters of the United States without a permit in violation of sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁴ Further, Complete R&R has not applied for coverage under, nor complied with the conditions of, an individual State Pollutant Discharge Elimination System ("SPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁵ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Clean Water Act section 402(p) and 40 C.F.R. sections 122.26(c)(1) and (e)(1).

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into the Hudson River and other receiving waters. The scale of this impact on water bodies is significant – for example, agencies and water quality specialists agree that stormwater⁶ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 6,000 river miles, 319,000 acres of larger waterbodies, 900 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility into Harrison Pond. Harrison Pond, located in Newburgh, New York, drains eastward into Quassaic Creek through Washington Heights and subsequently into the Hudson River. DEC has classified Harrison Pond as a Class B waterbody.⁸ Under New York's Water Quality Standards, "[t]he best usages of Class B waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish,

⁴ 33 U.S.C. §§ 1311(a), 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-17-004 [hereinafter "General Permit"], available at <http://www.dec.ny.gov/chemical/9009.html> (last visited Mar. 7, 2018). This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. The General Permit became effective on March 1, 2018, and will expire on February 28, 2023.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

⁷ See EPA, New York Water Quality Assessment Report, https://ofimpub.epa.gov/waters10/attains_state.control?p_state=NY#total_assessed_waters (last visited Mar. 7, 2018).

⁸ See 6 N.Y.C.R.R. § 862.6. See also New York State Department of Environmental Conservation, *Environmental Resource Mapper*, <http://www.dec.ny.gov/gis/erm/>.

and wildlife propagation and survival.”⁹ The downstream segment of Quassaic Creek is classified as a Class C waterbody by the DEC.¹⁰ Under New York’s Water Quality Standards, “[t]he best usage of Class C waters is fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival. The water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes.”¹¹ The New York Water Quality Standards set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.¹²

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. Complete R&R Is Discharging Stormwater Associated with an Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid SPDES permit.¹³ Complete R&R’s industrial activity at the Facility has caused and continues to cause a “discharge of pollutants” within the meaning of section 502(12) of the CWA¹⁴ and a “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. section 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁵

Complete R&R’s activities at the Facility include, but are not limited to, the purchase, collection, processing, storage, reshipment, and resale of scrap metal outdoors and the operation and storage of industrial equipment. We believe the Facility houses scrap piles that contain, among other materials, industrial scrap steel and non-ferrous materials, including but not limited to aluminum, copper, brass, stainless steel, bronze, zinc, and various alloys that are contaminated with industrial pollutants.

In carrying out these activities at the Facility, Complete R&R stores and handles materials in a manner that exposes them to precipitation and snowmelt. In particular, moving, stockpiling, processing, and crushing metal or other waste materials often leads to the release of pollutants

⁹ See 6 N.Y.C.R.R. § 701.7.

¹⁰ See 6 N.Y.C.R.R. § 862.6. See also New York State Department of Environmental Conservation, *Environmental Resource Mapper*, <http://www.dec.ny.gov/gis/erm/>.

¹¹ See 6 N.Y.C.R.R. § 701.8.

¹² See 6 N.Y.C.R.R. §§ 702, 703.

¹³ See CWA §§ 301(a), 402.

¹⁴ 33 U.S.C. § 1362(12).

¹⁵ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

including car parts, scrap metal, paint, sediment, crushed glass, copper, lead, zinc, nickel, iron, aluminum, arsenic, cadmium, cobalt, silver, mercury, and other metals, as well as non-metal pollutants of concern and numerous other waste materials.¹⁶ We observed exposed scrap metal, cars, open dumpsters and trailers filled with debris, and other materials at the Facility. Piles of sand, gravel, or other material are also exposed to stormwater. Activities related to the separation and dismantling of these materials with machinery are conducted outdoors. These activities can release dust, total suspended solids, total dissolved solids, pH, and other pollutants into stormwater and directly into Harrison Pond and Quassaic Creek.

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances, and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because Complete R&R fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Polluted stormwater discharges flow into Harrison Pond and Quassaic Creek, and subsequently into the Hudson River. All of these water bodies are “waters of the United States” as defined in 40 C.F.R. section 122.2 and, therefore, a “navigable water” as defined in section 502(7) of the CWA. Complete R&R does not have a SPDES permit for these discharges. Thus, Complete R&R is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under sections 301 and 402 of the CWA.

B. Complete R&R is Violating the Clean Water Act by Failing to Apply for SPDES Permit Coverage.

Complete R&R is engaged in the business of assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials and therefore is an industrial discharger engaged in Scrap and Waste Material under Standard Industrial Classification (“SIC”) Code 5093. This is an industrial activity included in Sector N of the General Permit. Further, this industrial activity is the primary industrial activity of Complete R&R.

Pursuant to section 402(a) and (p) of the CWA and regulations promulgated by EPA pursuant to the CWA, Complete R&R must apply for coverage under the General Permit or an individual SPDES permit for its discharge of polluted stormwater. The General Permit is applicable to Complete R&R because: 1) Complete R&R’s activities under SIC code 5093 are industrial activities as defined by 40 C.F.R. section 122.26(b)(14)(xi); 2) Complete R&R’s primary industrial activity is described by SIC code 5093, which is listed in Appendix B of the General Permit; and 3) Complete R&R has stormwater discharges to surface waters of the State from a point source.¹⁷

¹⁶ See EPA, Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities, available at <https://www.epa.gov/npdes/industrial-stormwater-fact-sheet-series> (last visited Mar. 7, 2018).

¹⁷ See General Permit, Part I (applicability requirements).

In addition, Complete R&R must apply for an individual SPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under the General Permit or an individual permit, Complete R&R is violating CWA sections 301(a) and 402(a) and (p), and 40 C.F.R. sections 122.26(c)(1) and (e)(1).¹⁸

To be eligible to discharge under the General Permit, Complete R&R must submit to DEC a registration form called a "Notice of Intent."¹⁹ Notice of Intent forms are available online from DEC and may be submitted by mail or electronically using DEC's E-NOI.²⁰ To register, Complete R&R is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system, immediate surface water body, or wetland to which site runoff discharges, the name of the watershed and nearest waterbody to which the site ultimately discharges, and information about whether the receiving waters are impaired.²¹ Complete R&R has failed to prepare and file a Notice of Intent or an application for an individual permit.²²

C. Complete R&R is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, Complete R&R must comply at all times with the requirements of the General Permit (or an individual permit).²³ By discharging stormwater associated with an industrial activity without complying with the General Permit, Complete R&R is violating CWA sections 301(a) and 402(a) and (p).²⁴ The main General Permit requirements that Complete R&R has failed and continues to fail to meet are explained further below.

¹⁸ Sections 301(a) and 402(a) and (p) make it unlawful for Complete R&R to discharge stormwater associated with industrial activity without obtaining a SPDES permit. 40 C.F.R. sections 122.26(c)(1) and (e)(1) require Complete R&R to apply for a SPDES permit that covers Complete R&R's discharge of stormwater associated with industrial activity.

¹⁹ See General Permit, Part I.D.2. In notifying Complete R&R that the Clean Water Act requires coverage under and compliance with a valid SPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Riverkeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual SPDES permit is required and the failure to obtain and comply with an individual SPDES permit for such discharges also violates CWA sections 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

²⁰ See http://www.dec.ny.gov/docs/water_pdf/msgp017004noiinstr.pdf.

²¹ *Id.*

²² A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

²³ This section discusses the compliance requirements of the General Permit. If Complete R&R elects to seek coverage under an individual SPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Complete R&R will still be required to comply with all of the following.

²⁴ Sections 301(a) and 402(a) and (p) make it unlawful for Complete R&R to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a SPDES permit.

1. Complete R&R has not developed and implemented a Stormwater Pollution Prevention Plan.

Before submitting a Notice of Intent, Complete R&R must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.²⁵ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²⁶

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring, and inspections.²⁷

Complete R&R has not developed nor implemented a legally compliant SWPPP, as required by Part I.D.1 of the General Permit.²⁸

2. Complete R&R has not implemented control measures and Best Management Practices that meet the best available technology standards.

Complete R&R cannot legally discharge stormwater under the General Permit until Complete R&R implements mandatory general and sector-specific control measures called Best Management Practices ("BMPs") in order to minimize the discharge of pollutants from the Facility.²⁹ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that effluent limits be met in order to "minimize the discharge of pollutants. The term 'minimize' means reduce and/or eliminate to the extent achievable using control measures (including Best Management Practices . . .) that are technologically available and economically practicable and achievable in light of best industry practice."³⁰ The General Permit's effluent limits include both numeric limits specific to certain sectors,³¹ as well as non-numeric technology-based effluent limits that apply to all facilities.³² These non-numeric

²⁵ See General Permit, Part I.D.1.

²⁶ See General Permit, Part III.A.

²⁷ See General Permit, Part III.A.

²⁸ We believe no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

²⁹ See General Permit, Part II. See also Part VII (setting forth sector-specific control measures and practices).

³⁰ General Permit, Part II. See also Part III.C.7 ("The SWPPP must document in writing the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part II.A and where applicable in Part VII, and the sector specific numeric effluent limitations in Part VII.").

³¹ See General Permit, Part VII.

³² See General Permit, Part II.A.

technology-based restrictions include minimizing the exposure of pollutants to stormwater³³ and minimizing the discharge of pollutants in stormwater.³⁴

Complete R&R has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts II and VII of the General Permit.

3. Complete R&R has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.

Complete R&R must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³⁵ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³⁶ Records of this inspection must be kept for five years.³⁷

In addition, qualified facility personnel must carry out routine inspections at least quarterly.³⁸ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.³⁹ Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.⁴⁰ In particular, all facilities authorized under the General Permit must:

- Collect and analyze stormwater samples for each outfall at least semi-annually;⁴¹
- Conduct visual monitoring of stormwater discharges at least quarterly;⁴²
- Perform an annual dry weather inspection to detect non-stormwater discharges;⁴³
- Inspect, sample and monitor discharges from coal pile runoff;⁴⁴
- Inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴⁵

³³ See General Permit, Part II.A.1.

³⁴ See General Permit, Part II.A.2.

³⁵ See General Permit, Part IV.A.1

³⁶ See General Permit, Part IV.A.1

³⁷ See General Permit, Part IV.A.2

³⁸ See General Permit, Part IV.B.1.

³⁹ See General Permit, Part IV.B.1-4.

⁴⁰ See General Permit, Part IV.F.

⁴¹ See General Permit, Part IV.F.3 (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.F.2 for obligations to sample more frequently.

⁴² See General Permit, Part IV.F.2.

⁴³ See General Permit, Part IV.F.1.d and Part IV.F.2.

⁴⁴ See General Permit, Part IV.F.1.e and Part IV.F.2.

⁴⁵ See General Permit, Part IV.B.1.f.

- Document storm events during which any samples are taken;⁴⁶
- Document all of these monitoring activities;⁴⁷
- Keep records of the monitoring with the Facility's SWPPP;⁴⁸ and
- Submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁴⁹

Because Complete R&R engages in industrial activities associated with Sector N, and specifically sub-sector N-3, sampling is required for:

- Total Suspended Solids;
- Chemical Oxygen Demand;
- Oil and Grease;
- Total Recoverable Aluminum;
- Total Recoverable Cadmium;
- Total Chromium;
- Total Recoverable Copper;
- Total Recoverable Iron;
- Total Recoverable Lead; and
- Total Recoverable Zinc.⁵⁰

We are not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁵¹ This notice provides Complete R&R with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

Complete R&R has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VII of the General Permit. Complete R&R also has failed to retain records and submit monitoring reports to DEC, as required by, at least, Parts IV and VII of the General Permit.

4. Complete R&R has failed to comply with additional requirements located in Part VII of the General Permit.

As noted above, the General Permit contains various requirements specific to Sector N. These requirements, some of which are referenced above, are collected in Part VII of the General Permit. The requirements include:

⁴⁶ See General Permit, Part IV.D.

⁴⁷ See *generally* General Permit, Part IV.F.3.

⁴⁸ See General Permit, Part III.A.8.

⁴⁹ See General Permit, Part IV.A.

⁵⁰ See General Permit, Part VII, Sector N, Table VII-N-2.

⁵¹ See General Permit, Part VII.

- If any vehicle dismantling activities occur at this facility, the owner or operator must also comply with applicable industry specific requirements outlined in Sector M - Automobile Salvage Yards.⁵²
- The site map shall identify the locations where the following activities or sources may be exposed to precipitation/surface runoff:
 - Locations of haul and access roads;
 - Scrap and waste material storage areas;
 - Outdoor scrap and waste processing equipment;
 - Areas where materials are sorted, transferred, stockpiled; and
 - Containment areas.⁵³
- If the facility discharges to a Copper Impaired waterbody, the owner or operator shall prevent the exposure of copper sources and copper containing materials or processes to stormwater. These materials shall be protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff.⁵⁴
- The SWPPP shall include a program to control materials received for processing:
 - Notify suppliers/public which scrap materials will not be accepted at the facility or are only accepted under certain conditions;
 - Develop and implement procedures to inspect inbound shipments of recyclable materials;
 - Develop and distribute educational material targeting the public and/or commercial drivers of inbound vehicles; and
 - Training targeted for personnel engaged in the inspection and acceptance of inbound recyclable materials.⁵⁵
- The SWPPP shall address BMPs to minimize contact of particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Good housekeeping measures, including frequent sweeping of haul and access roads and the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers; and
 - Good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas.⁵⁶
- The SWPPP must describe BMPs to minimize contact of stormwater runoff with stockpiled materials, processed materials and non-recyclable wastes. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Store the equivalent one day's volume of recyclable materials indoors;

⁵² See General Permit, Part VII, Sector N.

⁵³ See General Permit, Part VII, Sector N.

⁵⁴ See General Permit, Part VII, Sector N.

⁵⁵ See General Permit, Part VII, Sector N.

⁵⁶ See General Permit, Part VII, Sector N.

- Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading installed where appropriate to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;
 - Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;
 - Cover containment bins, dumpsters, roll off boxes;
 - Permanent or semi permanent covers over areas where materials are transferred, stored or stockpiled;
 - Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system; and
 - Sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of sediments.⁵⁷
- The SWPPP shall address BMPs to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Prohibit the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;
 - Disconnect or seal off all floor drains connected to the storm sewer system;
 - Drums containing liquids, especially oil and lubricants, should be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;
 - Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements;
 - Liquid wastes, including used oil, shall be stored in materially compatible and non leaking containers, and be disposed or recycled in accordance with all requirements under the Resource Recovery and Conservation Act (RCRA), and State or local requirements.⁵⁸
 - Facilities must develop and implement a program to control what is received at the facility. Such plan shall include:
 - Provisions for information/education flyers, brochures and pamphlets to suppliers of scrap and recyclable waste materials on:
 - Draining and proper recycling/disposal of residual fluids prior to delivery to the facility when applicable (e.g., from vehicles and equipment engines, radiators, and transmissions, oil filled transformers, and individual containers or drums);

⁵⁷ See General Permit, Part VII, Sector N.

⁵⁸ See General Permit, Part VII, Sector N.

- Removal and proper collection, recycling and/or disposal of mercury switches, mercury containing parts, lead tire weights, lead battery cable ends air conditioning refrigerants, and small PCB capacitors from vehicles; and
 - Removal and proper collection/disposal of PCB capacitors, ballasts, CFCs/HCFs, mercury switches, mercury containing components and other sources of potential contaminants from appliances.
 - Procedures to require certification by suppliers of inbound shipments of recyclable materials that the items identified above were completed.
 - Procedures to inspect inbound shipments of recyclable materials to ensure that the items identified above were completed.⁵⁹
- Facilities accepting lead acid batteries must develop and implement a scrap lead acid battery program. The plan shall address measures and controls for the proper handling, storage and disposal of scrap lead acid batteries. The SWPPP shall document decisions relating to the following BMP options:
 - Segregate scrap lead acid batteries from other scrap materials;
 - A description of procedures and/or measures for the proper handling, storage and disposal of cracked or broken batteries;
 - A description of measures to collect and dispose of leaking lead acid battery fluid;
 - A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead acid batteries to precipitation or runoff; and,
 - A description of employee training for the management of scrap batteries.⁶⁰
 - Install oil/water separators, sumps and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas). The plan shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Store all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover. Stormwater discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or recycle residual fluids that may be present shall be identified in the plan;
 - Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Stormwater runoff from these areas can be discharged provided:
 - The containment areas are constructed of either concrete, asphalt or other equivalent type of impermeable material;
 - There is a drainage collection system for runoff generated from containment areas;
 - There is a schedule to maintain the oil/water separator (or its equivalent); and

⁵⁹ See General Permit, Part VII, Sector N.

⁶⁰ See General Permit, Part VII, Sector N.

- Procedures are identified and implemented for the proper disposal or recycling of collected residual fluids.⁶¹
- The SWPPP shall include BMPs to minimize surface runoff from coming in contact with scrap processing equipment. In the case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), the plan shall describe measures to minimize the contact of residual fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, preventive maintenance, etc.). The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Provide stormwater containment within a 30 foot perimeter of the following fixed equipment: shears, balers, shredders, grinders, screeners and conveyors;
 - Oil/water separators or sumps;
 - Catch basin filters or sand filters;
 - Use and maintenance of silt and/or other fencing around light material processing to prevent migration lightweight materials such as foam by wind and stormwater runoff; and
 - Use dry-absorbents or other cleanup practices to collect and dispose of or recycle spilled or leaking fluids or use mercury spill kits for spills from storage of mercury switches.⁶²

More obligations may apply where the receiving water is impaired.

Complete R&R's activities are included in the definition of industrial activity to which the CWA applies. Therefore, Complete R&R must obtain coverage under and comply with the requirements of the General Permit, including those specific to Complete R&R's industrial activities, as described in Part VII and outlined above. Complete R&R has failed to obtain coverage under the General Permit and comply with these additional requirements.

5. Complete R&R is clearly violating the Clean Water Act.

In sum, Complete R&R's discharge of stormwater associated with industrial activities without a permit, Complete R&R's failure to apply for permit coverage, and Complete R&R's failure to comply with the above-listed conditions of the General Permit (or an individual SPDES permit) constitute violations of the General Permit and of sections 301(a) and 402(p) of the CWA.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Complete R&R is the person, as defined by section 502(5) of the CWA, responsible for the violations alleged in this Notice. Complete R&R has operational control over the day-to-day

⁶¹ See General Permit, Part VII, Sector N.

⁶² See General Permit, Part VII, Sector N.

industrial activities at this Facility. Therefore, Complete R&R is responsible for managing stormwater at the Facility in compliance with the CWA. We hereby put Complete R&R on notice that if we subsequently identify additional persons as also being responsible for the violations set forth above, we intend to include those persons in this action.

IV.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 1 Wisner Avenue, Newburgh, New York, 12550. During precipitation events, stormwater polluted by the facility rushes off the property and discharges directly into Harrison Pond and Quassaic Creek untreated. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.⁶³

V.

DATES OF VIOLATION

Every day upon which Complete R&R has failed to apply for permit coverage since Complete R&R first commenced operations at the Facility and discharged polluted stormwater is a separate violation of section 301(a) of the CWA and EPA's regulations implementing the CWA.⁶⁴

Additionally, Complete R&R has discharged pollution without a permit in violation of section 301(a) of the CWA on every day since Complete R&R commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Complete R&R seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Complete R&R claims coverage under a SPDES permit but fails to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

⁶³ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g.,* NRDC v. Sw. Marine, Inc., 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); City of New York v. Anglebrook Ltd. Partnership, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); United Anglers v. Kaiser Sand & Gravel Co., No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995)

⁶⁴ *See also* 33 U.S.C. §§ 402(p)(3)(A), (4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

Complete R&R is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available after the date of this Notice of Intent to File Suit.⁶⁵ These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

First, we will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to sections 505(a) and (d) and such other relief as permitted by law. We will seek an order from the Court requiring Complete R&R to obtain SPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to section 309(d) of the CWA,⁶⁶ each separate violation of the CWA subjects Complete R&R to a penalty not to exceed \$37,500 per day for each violation that occurred after January 12, 2009.⁶⁷ We will seek the full penalties allowed by law.

Third and lastly, pursuant to section 505(d) of the CWA, we will seek recovery of our litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(914) 478-4501 x 224
Attn: Michael Dulong

⁶⁵ See, e.g., *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

⁶⁶ 33 U.S.C. § 1319(d). See also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁶⁷ 40 C.F.R. § 19.2.

VIII.

IDENTIFICATION OF COUNSEL

Notifier is represented by legal counsel in this matter. The name, address, and telephone number of Notifier's attorneys are:

Pace Environmental Litigation Clinic, Inc.
Elisabeth Haub School of Law
78 North Broadway
White Plains, NY 10603
(914) 422-4343
Attn: Todd Ommen

IX.

CONCLUSION

The foregoing provides more than sufficient information to permit Complete R&R to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁶⁸

If Complete R&R has developed a SWPPP, we request that Complete R&R send a copy to the undersigned attorney.⁶⁹ Otherwise, we encourage Complete R&R to begin developing a SWPPP immediately after receiving this letter and ask that Complete R&R please inform the undersigned attorney of Complete R&R's efforts so that we can work with Complete R&R to avoid disputes over the contents of the SWPPP.⁷⁰

⁶⁸ 40 C.F.R. § 135.3(a).

⁶⁹ Note that under Part III.C.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within fourteen (14) days of receipt of a written request."

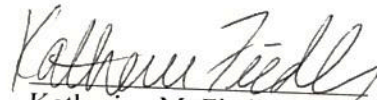
⁷⁰ Riverkeeper will not send a new notice letter in response to any effort Complete R&R makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). *See also* *NRDC v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

During the sixty-day notice period, we are willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Complete R&R wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Sincerely,



Todd D. Ommen
Managing Attorney



Katherine M. Fiedler
Legal Intern

cc:

Scott Pruitt, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Pete Lopez, EPA Region 2 Administrator
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Basil Seggos, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011